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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,417	09/23/2003	Lawrence Green	PDI-35	1088
7590 11/23/2004			EXAMINER	
G. DONALD WEBER, JR. 18442 Taft Avenue Villa Park, CA 92861			LINDSEY, RODNEY M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/667,417	<b>Applicant(s)</b> GREEN ET AL.	
	<b>Examiner</b> Rodney M. Lindsey	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "171". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claims 3 and 14 are objected to because of the following informalities: on the last lines of claims 3 and 14 "said facial shell" it appears should be --said facial shield--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 5-8, 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Green et al. '281. Note the supportive shell 500, facial shield 201, filtration device 561 and protective covering 200. With respect to claim 2 note filter 204. With respect to claim 4 note the headband as at 107. With respect to claim 5 upper portion 550 is equivalent to a spacer device as claimed. With respect to claim 6 the fasteners at 575, 675 are equivalent to sealing means as claimed. With respect to claim 7 note that portions of covering 200 are air permeable as claimed. With respect to claim 8 the lower end of the covering 200 allowing entry of the head is equivalent to an aperture as claimed. With respect to claim 12 note the joint between the lower edge of the shield 201 and the protective covering 200 being below the supportive shell. With respect to claim 13 the connection between the shield 201 and covering 200 is equivalent to zipper means as claimed.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 11, 14-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. '281 in view of Arai. In Green et al. note the supportive shell 500, facial shield 201, filtration device 561, protective covering 200 and filter 204. With respect to claims 3 and 14 Green et al. do not teach use of a shield protector for the shield. Arai teaches old the use of a shield protector 2 for a facial shield 1. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the facial shield 201 of Green et al. with the shield protector 2 of Arai to achieve the advantage of inhibiting misting of the facial shield as taught by Arai. With respect to claim 11 note such teaching of a removable shield protector 2 by Arai. With respect to claim 15 note that the protective covering 200 of Green et al. encircles and therefore conforms to the shape of the facial shield 201. With respect to claim 16 note that the filter 204 of Green et al. for resting upon and therefore conforming to the filtration device 561. With respect to claim 17 the fasteners at 575, 675 of Green et al. are equivalent to sealing means as claimed. With respect to claim 19 liner 580 for supporting a fan is equivalent to support means as claimed.

8. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al. '281 in view of Crump et al. Green et al. do not teach the use of closure means. Crump et al. teach old the use of closure means or elastic element 41. It would have been obvious to one of

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ordinary skill in the art at the time of the invention to provide the system of Green et al. with the closure means or elastic element 41 of Crump et al. to achieve the advantage of forming a seal about the neck area of a user to inhibit entry of unwanted gases.

***Allowable Subject Matter***

9. Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

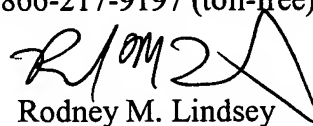
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the similar filtering systems of Her-Mou, Thomas, Jr. et al., Berg et al., British patent to Douglas et al., Bare et al., Paris et al., Diaz et al., Murphy, Green et al. '944 and Howie, the closure means of Dampney, Moran, Tucker et al. and Hill and the shield protector of Arnold.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (703) 305-7818. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R/M 2' followed by a stylized flourish.

Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

rml